

an unreasonable manner as provided in s 54(1)(b) is on the petitioner and not the respondent since it is the former that made the allegations. Furthermore as the marriage has lasted for 15 years it is consistent with the assertion of the wife respondent that she has done nothing wrong. Bearing in mind that the husband petitioner had had extra-marital affairs with at least three other women (which has not been challenged) and the wife respondent had tolerated such activities, this is a clear indication that the wife respondent is not a vicious person. She accepted the fact that the husband's infidelity was a passing fancy.

In the final analysis I am satisfied that the marriage has not irretrievably broken down. The husband's infidelity is but a passing fancy considering that he had affairs with three different women at different times. It is quite probable that after some time he would reconcile with his wife after the flush of the extra-marital affairs had ceased. It must be remembered that in recommending the enactment of the English Divorce Reform Act 1969 (now replaced by the Matrimonial Causes Act 1973) the Law Commission Report (Cmnd 3132) said at p 15:

- (i) To buttress rather than to undermine the stability of marriage and (ii) when regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with maximum fairness and the minimum bitterness, distress and humiliation.

Thus the Law Reform Act is not enacted for the purpose of encouraging divorce but to buttress the stability of marriage where it is possible to do so.

For the above reasons, the husband's petition is dismissed with costs.

Petition dismissed.

Solicitors: *Shearn Delamore & Co and Drew & Napier; Lee Fam Wong*

Reported by *Azra Moiz*

A Kesatuan Pekerja-Pekerja Kelab Selangor Iwn Ketua Pengarah Kesatuan Sekerja & Satu Yang Lain

MAHKAMAH TINGGI (KUALA LUMPUR) — USUL PEMULA
NO R8-25-98-89

EUSOFF CHIN H

3 SEPTEMBER 1990

B

Persatuan Yang Tidak Diperbadankan — Kesatuan sekerja — Pertikaian mengenai isu keahlian kesatuan dan pemilihan ahli jawatankuasa kesatuan — Mesti diselesaikan mengikut acara dalam kaedah dan perlembagaan kesatuan berkenaan — Rujuk kepada panel timbangtara — Ketua Pengarah tidak mempunyai apa-apa bidang kuasa untuk mengambil tindakan kecuali kedua-dua pihak telah bersetuju merujuk kepadanya — Akta Kesatuan Sekerja 1959, ss 44, 45 & 46

C

Undang-Undang Pentadbiran — Kuasa Ketua Pengarah Kesatuan Sekerja membatalkan atau menarik balik pendaftaran sesuatu kesatuan sekerja — Keputusan Ketua Pengarah membatalkan pendaftaran kesatuan dilakukan secara tergesa-gesa dan di luar bidang kuasa — Perintah certiorari dikeluarkan — Akta Kesatuan Sekerja 1959, ss 15 & 71

D

Pada 12 Julai 1989, Ketua Pengarah Kesatuan Sekerja Malaysia ('Ketua Pengarah') membatalkan pendaftaran Kesatuan Pekerja-Pekerja Kelab Selangor ('Kesatuan itu') (pemohon) atas alasan bahawa Kesatuan telah melanggar sebarang peruntukan Akta Kesatuan Sekerja 1959 (Akta 262) atau peraturan di bawah Akta tersebut atau peraturan Kesatuan. Kesatuan merayu kepada menteri tetapi telah ditolak. Latar belakang kes adalah berikut.

E

Pada 8 Disember 1988, tiga orang plaintif memohon melalui Saman Pemula No R8-31-134-88 di Mahkamah Tinggi untuk injunksi terhadap Kesatuan dan 11 orang ahli jawatankuasanya atas balasan bahawa ahli-ahli tersebut telah tidak dilantik dengan sempurna mengikut kaedah-kaedah Kesatuan. Alasan yang dikemukakan ialah banyak ahli yang mengundi dalam pemilihan ahli Jawatankuasa Kesatuan tidak lagi menjadi ahli. Mahkamah membuat perintah antara lain, bahawa perkara yang dipertikaikan patutlah diselesaikan terlebih dahulu dengan menggunakan remedi lain mengikut k 26. Kaedah-Kaedah dan Perlembagaan Kesatuan berkenaan, yakni dikemukakan ke panel timbangtara oleh kerana

G

pihak Kesatuan telah tiba-tiba menerima Borang F Akta 262 daripada Ketua Pengarah di bawah s 15 Akta itu bercadang membatalkan pendaftaran Kesatuan itu. Alasan ialah bahawa Kesatuan telah melantik presiden dan penolong setiausaha dari kalangan ahli yang tidak berfaedah dan resit bayaran yuran yang dikutip ditandatangani oleh pegawai lain selain dari Bendahari Kesatuan. Pada 11 April 1989, Kesatuan menulis kepada Ketua Pengarah meminta keterangan lanjut tentang tuduhan tersebut tetapi surat itu tidak dijawab. Afidavit Timbalan Ketua Pengarah menunjukkan bahawa sebab-sebab pembatalan pendaftaran Kesatuan itu ialah kerana kesatuan tidak menyelesaikan isu keahliannya itu. Nampaknya Ketua Pengarah tidak menjalankan siasatan langsung atas aduan mengenai keahlian Kesatuan tetapi telah terus mengeluarkan Notis dalam Borang F pada 30 Mac 1989. Penyiasatan hanya dijalankan oleh Pengarah Jabatan Kesatuan Sekerja Negeri Selangor pada 28 April 1989, sebulan selepas Borang F dikeluarkan. Beliau mengesyorkan untuk 'perintah dikeluarkan terhadap Kesatuan supaya pemilihan semula pegawai-pegawai diadakan bagi menyelesaikan pertikaian dalam Kesatuan.

H

I

Diputuskan, meluluskan permohonan itu:

(1) Ketua Pengarah sepatutnya menolak aduan yang diterimanya kerana s 44(1)(a) dan (b) Akta 262, menyatakan bahawa pertikaian seperti dalam kes ini hendaklah diselesaikan/diputuskan mengikut acara yang ditetapkan oleh kaedah-kaedah kesatuan sekerja berkenaan. Kaedah-Kaedah dan Perlembagaan Kesatuan itu ada membuat peruntukan di k 26 untuk merujuk pertikaian tersebut kepada panel timbangtara.

(2) Seksyen 44(1) dan (2) dan k 26 adalah jelas bahawa Ketua Pengarah dalam perkara ini tidak mempunyai apa-apa bidangkuasa untuk mengambil apa-apa tindakan kecuali kedua-dua pihak telah bersetuju mengemukakan perkara kepadanya untuk diselesaikan. Fakta kes ini menunjukkan yang pihak Kesatuan belum lagi memberi keizinan untuk Ketua Pengarah bercampur tangan dalam pertikaian ini.

(3) Tindakan yang diambil oleh Ketua Pengarah mengeluarkan notis dalam Borang F danewartakan pembatalan pendaftaran Kesatuan (pemohon) di bawah s 15(1) Akta 262 adalah tidak mematuhi kehendak undang-undang, tergesa-gesa dan di luar bidangkuasanya.

(4) Pengesyoran Pengarah Kesatuan Sekerja Negeri Selangor untuk perintah dikeluarkan bagi Kesatuan memilih semula pegawai-pegawai jawatankuasa tidak wajar dan tidak boleh dilaksanakan selagi kedua-dua pihak tidak menyelesaikan pertikaian mereka itu di hadapan panel timbangtara.

[English Summary]

On 12 July 1989, the Registrar of Trade Unions, Malaysia ('Registrar') cancelled the registration of Selangor Club Employees Union ('the Union') (applicant) on the ground that the Union had violated the provisions of the Trade Unions Act 1959 (Act 262) or rules under the said Act or rule of the Union. The union appealed to the minister but was rejected. The background of this case is as follows.

On 8 December 1988, three plaintiffs applied vide Originating Summons No R8-31-134-88 in the High Court for an injunction against the Union and 11 people on the ground that the said members were not properly appointed according to the rules of the Union. The reason given was that many members who voted at the election of committee members of the Union, were no longer members. The court ordered, inter alia, that the subject of dispute should have been referred for settlement beforehand by way of other remedies according to r 26 of the Constitution and Rules of the Union concerned, that is, to be referred to a panel of arbitrators for arbitration. However this matter was not arbitrated because the Union suddenly received Form F of Act 262 from the Registrar under s 15 of the said Act intending to cancel the registration of the Union. The reason was that the Union had appointed the president and assistant secretary from non-viable members and some receipts of payments of subscriptions collected were signed by officers other than the treasurer of the Union. On 11 April 1989 the Union had written for further particulars on the aforesaid allegations but the said letter was not answered. The affidavit of the Deputy Registrar showed that the reasons for the cancellation of registration of the Union was because the Union had failed to settle the membership issue. It seems that the Registrar had failed to investigate upon the complaint on the membership issue at all but had proceeded to issue notice in Form F on 30 March. Investigations were only carried out by the Registrar of Trade Unions Selangor on 28 April 1989, a month after Form F was issued. He had recommended that an order be issued against the Union to carry out a re-election of the office-bearers for settlement of the dispute in the Union.

Held, allowing the application:

(1) The Registrar should have dismissed the complaint received by him because s 44(1) (a) and (b) Act 262, provided that the dispute as in this case should be settled/decided according to the procedure provided for by the rules of the trade union in question. The Constitution and Rules of the Union had provided under r 26 to refer the said dispute to a panel of arbitrators.

(2) Section 44(1) and (2) and r 26 are clear that the Registrar in this matter did not have the jurisdiction to take any actions unless both parties consent to refer the matter to him for settlement. The facts of this case showed that the Union had not given their consent for the Registrar to be involved in this dispute.

(3) The actions of the Registrar in issuing the notice in Form F and gazetting the cancellation of registration of the Union (applicant) under s 15(1) Act 262 were not done in accordance with the requirements of the law, impulsive and out of his jurisdiction.

(4) The recommendation of the Registrar of Trade Unions Selangor for an order to be issued that the Union hold a re-election of the committee members is not proper and cannot be carried out as long as their dispute is not arbitrated before a panel of arbitrators.]

[*Nota Penyunting:* Rayuan yang dibuat oleh responden-responden ke Mahkamah Agung melalui Rayuan Sivil No 01-56-1990 telah dibicarakan pada 7 Januari 1991 dan Mahkamah itu (terdiri dari Abdul Hamid Omar LP, Ajaib Singh SCJ dan Wan Yahya J) menolak rayuan itu.]

Undang-undang rujukan

Akta Kesatuan Sekerja 1959 ss 15, 44, 45, 46, 71

B Lobo bagi pihak pemohon.

Wong Cheng Kiat dan *Noraini (Cik)* bagi pihak responden.

V Chandran bagi pihak pencelah.

Cur Adv Vult

Eusoff Chin H: Pada 12 Julai 1989, Ketua Pengarah Kesatuan Sekerja Malaysia ('Ketua Pengarah') membatalkan pendaftaran Kesatuan Pekerja-Pekerja Kelab Selangor (Club Employees Union Selangor) ('Kesatuan') (pemohon). Alasan pembatalan yang diberi oleh Ketua Pengarah dalam pemberitahu warta ialah:

Kesatuan ini telah melanggar sebarang peruntukan Akta Kesatuan Sekerja 1959 atau Peraturan-Peraturan yang dibuat di bawah Akta tersebut atau Peraturan-Peraturan Kesatuan.

Pada 21 Julai 1989, Kesatuan itu menerima salinan surat Ketua Pengarah yang dialamatkan kepada Pencetak Kerajaan meminta pemberitahu itu diwartakan.

Pada 25 Julai 1989 Kesatuan membuat rayuan kepada menteri. Pada 15 Ogos 1989 menteri memberitahu Kesatuan bahawa rayuan Kesatuan ditolak.

Fakta-fakta ringkas

1 Latar belakang

Pada 8 Disember 1988, Saman Pemula No R8-31-134-88 telah difailkan di Mahkamah Tinggi Kuala Lumpur

di mana tiga orang plaintif telah memohon injuksi terhadap Kesatuan dan 11 orang ahli Jawatankuasa Kesatuan itu atas alasan 11 orang ahli tersebut telah tidak dilantik dengan sempurna mengikut Kaedah-Kaedah Kesatuan berkenaan pada 16 October 1988. Alasan yang dikemukakan dalam kes itu ialah kerana banyak ahli yang mengundi dalam pemilihan ahli jawatankuasa Kesatuan itu tidak lagi menjadi ahli kerana tidak membayar yuran selama lebih 3 bulan. Permohonan itu telah pun dibicarakan ex parte dan injuksi interim telah diperintahkan pada 9 Disember 1988. Atas permohonan responden-responden untuk injuksi interim diketepikan, dan selepas meneliti segala affidavit-affidavit dan dokumen-dokumen yang difailkan, pada 27 Februari 1989 saya telah membicarakan permohonan untuk mengenyepikan injuksi itu. Pada 3 Mac 1989 saya telah membuat perintah supaya injuksi yang dikeluarkan pada 9 Disember 1988 dibatalkan dan saman pemula plaintif juga dibatalkan (struck off) kerana saya mendapati bahawa perkara yang dipertikaikan patutlah diselesaikan terlebih dahulu dengan menggunakan remedi-remedi lain (internal remedies), mengikut k 26 Kaedah-Kaedah dan Perlembagaan Kesatuan berkenaan, iaitu perkara itu hendaklah dikemukakan kepada panel penimbangtara untuk diselesaikan. Di dalam permohonan itu, P Kommoty ialah seorang daripada mereka yang mengikrar beberapa affidavit menyokong permohonan, dan K Selvaraju ada mengikrar affidavit-affidavit menentang permohonan itu.

2 Ekoran yang membawa kepada permohonan sekarang

Nampaknya perkara ini telah tidak dibawa kepada panel timbangtara oleh kerana pihak Kesatuan telah dengan tiba-tiba menerima notis dalam Borang F Akta Kesatuan Sekerja 1959 daripada Ketua Pengarah yang menyatakan seperti berikut:

PKS 407/Jld 2/(97)

Pos Berdaftar AT

Borang F

[Seksyen 15 (2A) dan Peraturan 10]
Akta Kesatuan Sekerja 1959

Ibu Pejabat Pendaftaran Kesatuan Sekerja,
Pusat Bandar Damansara,
50542 Kuala Lumpur.

30 Mac 1989

Notis pembatalan perakuan pendaftaran di bawah seksyen 15(1)(b) Akta Kesatuan Sekerja

Nama Kesatuan Sekerja: Club Employees Union Selangor
No Pendaftaran : 358

Notis adalah diberi di bawah seksyen 15(2A) Akta Kesatuan Sekerja 1959 kepada kesatuan yang tersebut di atas bahawa adalah maksud Ketua Pengarah hendak membatalkan Perakuan Pendaftaran Kesatuan itu pada atau selepas 1 Mei 1989, melainkan sebab ditunjukkan sebaliknya sementara ini di bawah peruntukan seksyen 15(1)(b)(v) iaitu:

- A '(v) bahawa kesatuan itu telah melanggar sebarang peruntukan Akta Kesatuan Sekerja 1959 atau Peraturan-Peraturan yang dibuat di bawah Akta tersebut atau Peraturan-Peraturan Kesatuan.'

Alasan-alasan bagi pembatalan yang dicadangkan itu:

- B (1) hasil dari penyiasatan yang telah dijalankan oleh pejabat ini menunjukkan bahawa kesatuan ini telah melantik presiden dan penolong setiausaha dari kalangan ahli yang tidak berfaedah. Perbuatan tersebut menyalahi peraturan 4.3 Peraturan-Peraturan Kesatuan;
C (2) hasil dari penyiasatan yang telah dijalankan oleh pejabat ini menunjukkan bahawa resit bayaran yuran yang dikutip telah ditandatangani oleh pegawai lain selain dari Bendahari Kesatuan. Perbuatan ini bertentangan kehendak peraturan 56(1) Peraturan-Peraturan Kesatuan Sekerja 1959.

Alasan-alasan Ketua Pengarah hendaklah bertindak seperti yang tersebut diatas ialah: Kesatuan telah melanggar peruntukan-peruntukan Akta Kesatuan Sekerja 1959 dan Peraturan-Peraturan Kesatuan Sekerja 1959.

D tt
(S Sivagnanam),
Ketua Pengarah Kesatuan Sekerja,
Malaysia.

E Setiausaha,
Club Employees Union,
70, Bunga Kemboja Dua,
Taman Musa Ampang,
Selangor

sk
Yang DiPertua,
Club Employees Union,
43-02-10 Rumah Pangsa Sri Johor,
Ratu 3½, Jalan Cheras,
56100 Kuala Lumpur

F Bendahari,
Club Employees Union,
286, Jalan 2 Seri Setia,
47300 Petaling Jaya.

Pengarah Kesatuan Sekerja, Selangor.

- G Pada 11 April 1989, Kesatuan telah menulis kepada Ketua Pengarah seperti berikut meminta keterangan lanjut:

11 April 1989
The Director-General of Trade Unions
Ibu Pejabat pendaftaran Kesatuan Sekerja
Tingkat 7 Blok 'B' Selatan
Pusat Bandar Damansara
50542 Kuala Lumpur

AR Registered

H Dear Sir

Re: Notice dated 30 March 1989 under section 15(1) of the Trade Unions Act 1959

I We refer to the above notice received by the union on 3 April 1989.

We are rather surprised that your office had conducted an 'investigation' and concluded the grounds of reasons for your proposed action as mentioned in your notice *without* giving this union or the officers concerned (mentioned in

your notice) an opportunity to give an explanation or to assist you in ascertaining the truth of the matter.

We believe that the person or persons responsible for your belief as mentioned in the said notice were the same people who were involved in Kuala Lumpur High Court Originating Summons No R8-31-134 of 1988 in which the union and the president and assistant secretary (among others) were the defendants. This matter was struck off with costs and an order that damages incurred were to be assessed and paid to the defendants was made on 3 March 1989 by the Kuala Lumpur High Court.

Be that as it may, and before we are able to reply to the charges in your above-mentioned notice *please furnish us* with the following further particulars (which we presume you have from your investigation).

(a) Charge/ground (i) of the notice

The period in respect of which this union is alleged to have 'melantik' the president and assistant secretary who were not members in benefit. As far as our records show the said officers were at all material times members in benefit and whose names were not deleted from the membership register maintained under rule 13(3) of the Rules. However, the further details requested by us above will enable us to reply adequately to this matter. In fact at the last elections when their names were nominated the then secretary did not reject the said nominations on the ground that their names were deleted from the membership register under rule 4.3 which he could have done under r 9(3) of the Rules.

(b) Charge/Ground (ii) of the Notice

Please furnish us with details of the subscription and the period during which such subscription was collected, the members concerned from whom the subscription was collected and the name and designation of the 'pegawai lain' who collected the said subscription before we are able to answer this charge. This union has at all material times complied with r 13/3 of the Rules and consequently reg 56(1) of the Trade Union Regulations 1959.

Upon receipt of the particulars above mentioned we will be to elaborate on our contentions above so as to satisfy your goodself that there has been no breach of s 15(1)(b)(v) of the Trade Unions Act 1959. This is especially so since the subject matter of your notice above mentioned (if true) can amount to criminal offences under s 63 of the said Act of 1959.

In this connection, if your goodself is not satisfied with the above mentioned, we hereby request your goodself to *hold an inquiry* to determine the question of breach of s 15(1)(b)(v) under the provisions of s 15(3) of the Trade Unions Act 1959.

Yours faithfully,

Sgd
K Selvaraju
Assistant Secretary

Ketua Pengarah tidak menjawab surat ini.

Affidavit jawapan yang difailkan oleh Hj Ahmad bin Suratman, Timbalan Ketua Pengarah, menunjukkan bahawa sebab-sebab pendaftaran kesatuan sekerja

A pemohon dibatalkan ialah kerana pemohon tidak menyelesaikan perkara mengenai isu keahlian Kesatuan itu, iaitu, sama ada benar atau tidak bahawa beberapa orang yang mendakwa mereka masih menjadi ahli, tidak lagi menjadi ahli kerana tidak membayar yuran kepada kesatuan sekerja pemohon selama lebih tiga bulan.

B Apa yang membawa kepada pengeluaran notis dalam Borang F ialah kerana Ketua Pengarah ada menerima aduan bertarikh 3 Disember 1988 mengenai keahlian Kesatuan yang diterima oleh Ketua Pengarah pada 5 Disember 1988. Aduan itu mengatakan ahli-ahli yang tidak membayar yuran kepada pemohon telah dibenarkan mengundi untuk memilih ahli-ahli jawatankuasa pemohon. Dua orang dalam golongan ini telah calonkan untuk menjadi ahli jawatankuasa.

D Nampaknya Ketua Pengarah tidak menjalankan siasatan langsung atas aduan itu, tetapi telah terus mengeluarkan notis dalam Borang F untuk membatalkan pendaftaran Kesatuan pada 30 Mac 1989.

E Penyiasatan atas aduan ini hanya dijalankan oleh Pengarah Jabatan Kesatuan Sekerja Negeri Selangor pada 28 April 1989, iaitu sebulan selepas Borang F dikeluarkan, dan laporan yang dikemukakan oleh Pengarah Selangor itu kepada Ketua Pengarah adalah seperti berikut:

Ketua Pengarah Kesatuan Sekerja,
Malaysia,
Kuala Lumpur.
Tarikh: 22 Mei 1989

F Aduan Terhadap Pemilihan Majlis Jawatankuasa Kerja Club Employees Union, Selangor yang diadakan pada 16 Oktober 1988

Adalah saya dengan hormatnya merujuk kepada perkara di atas.

G 2 Perbincangan telah diadakan di antara mereka tercatat di bawah pada 28 April 1989 di pejabat ini, nama-nama mereka berkenaan seperti berikut:

- 2.1 En Wong Sui Hong (bendahari),
- 2.2 En K Selvaraju (pen setiausaha),
- 2.3 En Nordin Hj Wahid (presiden), dan
- 2.4 En Mohd Suhaimi (naib presiden).

Di antara perkara-perkara yang dibincangkan adalah seperti berikut di bawah:

- H 3.3 kedudukan kesahihan keahlian En Nordin Hj Wahid dan En K Selvaraju;
- 3.2 pemecatan keahlian En P Kommoty;
- 3.3 pemilihan Exco pada 16 Oktober 1988;
- 3.4 penggajian pekerja — En MG Doraisamy dan En Patrick Rao.

I 4 Kedudukan perkembangan hasil perbincangan di atas perkara-perkara yang dinyatakan di perenggan 3 di atas seperti berikut:

- 4.1 En Nordin Hj Wahid dan En K Selvaraju bersetuju menjadi ahli baru kesatuan selaras dengan peraturan 4(4) Peraturan dan Perlembagaan Kesatuan. Kedua-duanya

bersetuju melepaskan jawatan dan notis perletakkan jawatan akan dikemukakan dalam Borang L.

4.2 Pemecatan keahlian En P Kommoty dianggap tidak sah kerana semua keputusan yang diambil oleh Exco semasa En Nordin Hj Wahid dan En K Selvaraju menjadi pegawai tidak sah.

Kesatuan setuju batalkan surat pemecatan En P Kommoty dan beliau dijemput semula menjadi ahli dan memegang jawatan setiausaha kesatuan.

4.3 Pemilihan Exco yang diadakan pada 16 October 1988 dianggap tidak sah kerana semua keputusan mengadakan pemilihan telah dikendalikan oleh bukan ahli berhak iaitu En Nordin Hj Wahid (bertindak sebagai presiden) dan En K Selvaraju (bertindak sebagai penolong setiausaha). Kesatuan nampak bersetuju untuk mengadakan pemilihan Exco yang baru. *Saya mengesyorkan perintah dikeluarkan terhadap kesatuan supaya pemilihan semula pegawai-pegawai diadakan.*

4.4 Notis penggajian pekerja En MG Doraisamy (setiausaha kerja) dan En Patrick Rao (penasihat) tiada dikemukakan sebelum ini. Kesatuan bersetuju akan mengemukakan Borang L(1) bagi perantikan/perletakan jawatan En MG Doraisamy. Didapati En Patrick Rao tidak digaji oleh kesatuan, oleh itu tindakan susulah terhadap perkara ini tidak perlu.

5 En P Kommoty telah dipanggil hadir ke pejabat ini pada 3 Mei 1989 jam 9 pagi tetapi beliau gagal hadir tanpa sebarang alasan atau cuba menghubungi pejabat ini. Penyiasatan hanya berdasarkan maklumat yang diperolehi daripada mereka yang hadir pada 28 April 1989 sahaja.

6 Dikemukakan untuk makluman dan tindakan sewajarnya oleh tuan.

Sekian, terima kasih.

'Berkhidmat Untuk Negara'

tt

(K Jebaratnam)

Pengarah Kesatuan Sekerja
Selangor dan Pahang

Adalah jelas bahawa Pengarah Jabatan Kesatuan Sekerja Selangor telah membuat pengesyoran untuk 'perintah dikeluarkan terhadap Kesatuan supaya pemilihan semula pegawai-pegawai diadakan' bagi menyelesaikan pertikaian dalam kesatuan itu.

Saya dapati penyiasatan yang dibuat pada 28 April 1989 oleh Pengarah Pejabat Pendaftaran Kesatuan Sekerja Selangor selepas Borang F dikeluarkan pada 30 Mac 1989 ialah kerana Ketua Pengarah telah sedar kesilapan yang dibuat olehnya, iaitu mengeluarkan notis Borang F: (i) tanpa terlebih dahulu membuat penyiasatan lanjut ke atas aduan itu, dan (ii) tanpa memberi peluang kepada Kesatuan untuk menjawab aduan yang diterima oleh Ketua Pengarah dan kesedaran itu hanya timbul apabila dia menerima jawapan pemohon kepada Ketua Pengarah dalam suratnya bertarikh 11 April 1989 (yang dipetik di atas) di mana pemohon ada menyatakan yang tindakan Ketua Pengarah mengeluarkan Borang F adalah tidak wajar kerana tindakan Ketua Pengarah dibuat 'without giving this union or the officers con-

cerned ... an opportunity to give an explanation or to assist you in ascertaining the truth of the matter'.

Peruntukan undang-undang

Kuasa Ketua Pengarah (pendaftar) untuk membatalkan atau menarik balik pendaftaran sesuatu kesatuan sekerja adalah diberi oleh s 15(1) Akta Kesatuan Sekerja 1959 (Akta 262) atas alasan-alasan yang disebutkan oleh seksyen itu. Akta itu belum lagi diterjemahkan ke Bahasa Malaysia. Seksyen 15(1) Akta 262 menyatakan:

A certificate of registration of a trade union may be cancelled or withdrawn by the Registrar —

- C (a) at the request of the trade union upon its dissolution to be verified in such manner as the Registrar may require; or
- (b) if he is satisfied —
- (i) that the certificate of registration was obtained or issued by fraud or mistake;
- (ii) that any one of the objects or rules of the trade union is unlawful;
- (iii) that the constitution of the trade union or of its executive is unlawful;
- (iv) that the union has been or is being or is likely to be used for any unlawful purpose or for any purpose contrary to its objects or rules;
- (v) that the trade union has contravened any provision of this Act or of any regulations made thereunder, or of any of its rules, or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter for which provision is required by section 38;
- (iv) that the funds of the trade union are or have been expended in an unlawful manner or on an unlawful object or on an object not authorized by the rules of the union; or
- F (vii) that the trade union has ceased to exist.

Ketua Pengarah juga diberi kuasa am untuk memanggil dengan saman, seseorang untuk memberi maklumat, oleh s 71 yang menyatakan:

- G (1) The Registrar may summon before him any person who he has reason to believe is able to give any information —
- (a) as to the existence of or as to the operations of any trade union or suspected trade union, which is not registered under this Act; or
- (b) as to the activities of any registered trade union.
- H (2) The person so summoned shall attend at the hour and place in the summons specified and produce all documents in his custody, possession or power relating to such trade union or suspected trade union, and answer truthfully all questions which the Registrar may put to him.
- (3) The Registrar may administer oaths to and examine on oath any person summoned before him under this section.
- I (4) Any person who refuses to comply with such order or who obstructs compliance with such order may be arrested and detained in custody and shall, on conviction, be liable to a fine not exceeding five hundred ringgit.
- (5) No statement made by a person summoned before the Registrar under this section shall subject him to any arrest or criminal prosecution, or be proved against him in any

criminal proceeding, except a prosecution for failing to answer truthfully under this section.

Kuasa Ketua Pengarah untuk menyelesaikan pertikaian adalah diberi oleh ss 44-46 yang mana perlu diturunkan disini untuk senang dirujuk:

44 (1) Every dispute between —

- (a) a member or person claiming through a member or under the rules of a registered trade union or any branch thereof, and the union or any branch thereof or an officer thereof;
- (b) any person aggrieved who has ceased to be a member of a registered trade union or any branch thereof, or any person claiming through such person aggrieved, and the union or any branch thereof, or an officer thereof;

shall be decided in the manner *directed by the rules of the trade union*, and the decision so given shall be binding and conclusive on all parties; and application for the enforcement thereof may be made to a Sessions Court.

(2) The parties to a dispute in a registered trade union may, by consent (unless the rules of the union expressly forbid it), refer the dispute to the Registrar.

(3) The Registrar of Trade Unions shall either by himself or by any Deputy Registrar, or any Senior Assistant Registrar, or any Assistant Registrar, hear and determine any dispute referred under subsection (2), and shall have power to order the expenses of determining the dispute to be paid either out of the funds of the union, or by such parties to the dispute as he may think fit, and his determination and order shall have the same effect and be enforceable in like manner as a decision made in the manner directed by the rules of the union.

(4) The Registrar of Trade Unions, any Deputy Registrar, or any Senior Assistant Registrar, or any Assistant Registrar may for the purpose of determining a dispute referred under subsection (2) administer oaths, and may require the attendance of all parties concerned, and of witnesses, and the production of all books and documents relating to the matter in question.

(5) Where the rules of a registered trade union direct that disputes shall be referred to the courts, the dispute shall be determined by a Sessions Court.

(6) Where no decision is made on a dispute within forty days after application to the union for a reference under its rules, the member or person aggrieved may apply to a Sessions Court and the Sessions Court may hear and determine the matter in dispute.

45 Notwithstanding anything contained in the Arbitration Act, 1952, or in any other written law, a Sessions Court and the Registrar or any arbitrator or umpire to whom a dispute is referred under the rules of a registered trade union shall not be compelled to state a special case on any question of law arising in the case, but the Court or Registrar may, at the request of either party, state a case for the opinion of the High Court on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents as might be granted by any court, and the discovery shall be made on behalf of the union by such officer thereof as the Sessions Court or the Registrar may determine.

46 In this Part the expression 'dispute' includes any dispute arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member or to be

reinstated as a member, or whether the rules relating to the decision of disputes or the procedure thereunder *has not been complied with* but, save as aforesaid, in the case of a person who has ceased to be a member, does not include any dispute other than a dispute on a question between him and the trade union or an officer thereof which arose whilst he was a member or arises out of his previous relation as a member to that trade union. (Emphasis added.)

Pendapat

Dari fakta-fakta yang terdapat dalam kes ini, dan peruntukan undang-undang yang dipetik tadi, saya berpendapat bahawa:

- (1) Perkara yang dipertikaikan itu adalah mengenai soalan sama ada seseorang yang telah dipilih/dilantik ke Jawatankuasa Persatuan, atau seseorang yang mengundi semasa pemilihan itu dijalankan masih atau pun sudah tidak lagi menjadi ahli Kesatuan. Aduan yang diterima oleh Ketua Pengarah mengatakan mereka yang terlibat dalam pemilihan ke Jawatankuasa Kesatuan tidak lagi menjadi ahli Kesatuan kerana tidak membayar yuran selama lebih tiga bulan.
- (2) Perkara ini telah pun dikemukakan ke Mahkamah Tinggi (Kes R8-31-134-88), yang mana kes itu telah ditolak oleh mahkamah kerana pihak-pihak berkenaan hendaklah menggunakan remedi dalaman (internal) dengan mengemukakan perkara itu kepada panel timbangtara mengikut k 26 Kaedah-Kaedah Kesatuan berkenaan.
- (3) Ketua Pengarah sepatutnya juga menolak aduan yang diterimanya kerana s 44(1)(a) dan (b) Akta 262, menyatakan bahawa pertikaian (dispute) seperti itu hendaklah diselesai/diputuskan mengikut acara yang ditetapkan oleh kaedah-kaedah kesatuan sekerja berkenaan, (in the manner directed by the rules of the trade union). Kaedah-Kaedah dan Perlembagaan Kesatuan itu ada membuat peruntukan di k 26 seperti berikut:

Rule 26 Disputes

1 Every dispute between —

- (a) a member or person claiming through a member or under the Rules, on the one part, and the Union or an officer thereof, on the other part; or
- (b) any person aggrieved who has ceased to be a member of the Union or any person claiming through such person aggrieved, on the one part, and the Union or an officer thereof, on the other part; or
- (c) the Union and an officer of the Union; shall be decided by reference to arbitration.

2 A panel of not less than five arbitrators, none of whom being directly or indirectly interested in the funds of the Union, shall be appointed as a permanent panel of arbitrators by an annual general meeting, and any vacancy or vacancies shall be filled at a subsequent general meeting.

3 The complaining party to a dispute or a person appointed by him shall draw three names from the panel of arbitrators by lot in the usual manner and the three arbitrators whose names are first drawn shall decide the dispute.

4 In this rule the expression 'dispute' includes any dispute arising on the question whether a member or person aggrieved is entitled to be or continue to be a member or to be reinstated as a member but, save as aforesaid, in the case of a person who has ceased to be a member, does not include any dispute other than a dispute on a question between him and the Union or an officer thereof, which arose whilst he was a member or arises out of his previous relation as a member of the Union.

5 There shall be a right of appeal to the annual general meeting whose decision shall be binding and conclusive.

Provided always that in a dispute connected with

- (a) the election of officers of the Union; or
- (b) the accounts and funds of the Union; or
- (c) the non-compliance with any Rule of the Union,

the parties to the dispute may, by consent, refer the dispute to the Registrar of Trade Unions.

Nampaknya peruntukan s 41(1) dan (2), dan juga k 26 yang disebut tadi adalah jelas, iaitu Ketua Pengarah dalam perkara ini tidak mempunyai apa-apa bidangkuasa (jurisdiction) untuk mengambil apa-apa tindakan kecuali kedua-dua pihak telah bersetuju mengemukakan perkara itu kepadanya untuk diselesaikan menurut s 44(2) Akta 262 dan k 26(5)(c) Kaedah-Kaedah dan Perlembagaan Kesatuan. Fakta-fakta dalam kes ini menunjukkan yang pihak Kesatuan (pemohon) belum lagi memberi keizinan untuk Ketua Pengarah bercampurtangan dalam pertikaian ini.

Saya dapati Ketua Pengarah telah tidak mematuhi kehendak undang-undang apabila dia mengambil tindakan mengeluarkan notis borang F, dan tindakan Ketua Pengarah itu adalah di luar bidangkuasanya, dan oleh itu tidak sah dan patut dibatalkan. Saya juga dapati bahawa pengesyoran Pengarah Kesatuan Sekerja Negeri Selangor untuk perintah dikeluarkan bagi Kesatuan memilih semua pegawai-pegawai jawatankuasa mereka seperti dalam suratnya bertarikh 22 Mei 1989, tidak wajar dan tidak boleh dilaksanakan selagi kedua-dua pihak tidak menyelesaikan pertikaian mereka itu di hadapan panel timbangtara.

- (4) Tindakan yang diambil oleh Ketua Pengarah mengeluarkan notis dalam borang F danewartakan pembatalan pendaftaran kesatuan (pemohon) di bawah s 15(1) Akta 262 adalah satu tindakan yang tergesa-gesa dan di luar bidangkuasa Ketua Pengarah.

Keputusan

Atas alasan-alasan yang saya nyatakan itu, saya benarkan permohonan Kesatuan, dan saya arahkan perintah

A certiorari dikeluarkan untuk membatalkan keputusan Ketua Pengarah bertarikh 12 Julai 1989 dan perintah menteri yang mengesahkan keputusan Ketua Pengarah itu. Saya juga memerintah kedua responden membayar kos kepada pemohon.

Permohonan diluluskan.

B Peguamcara: Lobo & Associates; Xavier & Chandran.

Dilaporkan oleh Neoh Lay Choo

C Wong Sin Meng v Wong Sam Moi & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO F22-3-1986
LIM BENG CHOON J
10 JULY 1990

D *Civil Procedure — Dismissal of action for want of prosecution — Delay in setting down action for trial — Relevance of limitation period — Limitation not pleaded — Whether relevant — Rules of the High Court 1980, O 34 r 2 — Limitation Act 1953, ss 4 & 9*

Civil Procedure — Limitation — Action for recovery of land — Limitation period applicable — When limitation period begins to run — Limitation Act 1953, s 9

E The plaintiff commenced an action on 17 December 1985 for the recovery of land. The writ was served on the second defendant on 13 March 1986 and on the first defendant on 19 March 1986. On 30 May 1986 the plaintiff filed an application for summary judgment. The application was dismissed on 24 August 1987 and the first defendant was directed to file her defence within 14 days of that date but she filed her defence only on 5 September 1987. The plaintiff set down the action for trial on 3 March 1989. The first defendant applied for an order to dismiss the action for want of prosecution on the ground that the plaintiff had failed to set the action down for trial pursuant to an order issued on 22 October 1988 which required the action to be set down for trial within 60 days of the date of the order. The application to dismiss the action for want of prosecution was granted on 25 August 1989 following which further arguments were heard in open court. In open court, it was contended for the plaintiff that the action had not been time-barred by then. It was said that:

- F
- (a) limitation must be specifically pleaded but that the first defendant had never expressly pleaded it; and
 - (b) as the claim of the plaintiff was that the first defendant was holding the property in trust for the plaintiff, the defence of limitation was not available to the plaintiff.
- H

Held, dismissing the first defendant's application:

(1) The question of the failure on the part of the first defendant to plead that the action was time-barred did not arise. The action could be struck out if the ingredients for striking out were applicable regardless of the pleadings of the parties.

I (2) The period of limitation for actions for the recovery of land is 12 years.

(3) There was no evidence that there was ever an infringement or a clear and unequivocal threat of an infringement of the right of the plaintiff before the commencement of